

# GUIDELINES

The Newsletter of the New Jersey Executive Commission on  
Ethical Standards

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Room 1407

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## **THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS**

Chairwoman Linda Anselmini, Vice Chair Elizabeth Randall, Commissioner Arthur Eisdorfer, Commissioner Alisha Griffin, Commissioner Lonna Hooks, Commissioner Leo Klagholz, and Commissioner Gualberto Medina; Executive Director Rita L. Strmensky.

The cases presented in "Guidelines" are designed to provide State employees with examples of conflicts issues that have been addressed by the Executive Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

## **DISTRIBUTION OF DEPARTMENT CODES OF ETHICS**

On August 1, 1994, a proposed amendment to the Commission's Administrative Code was published in the *New Jersey Register*. The proposed amendment requires that each State agency distribute the agency's code of ethics to each officer and employee and that each officer and employee sign a receipt indicating that he/she has received the code, is responsible for reading the code, and that he/she is bound by it. The proposed amendment also requires that each agency provide a notice to each officer and employee specifying from whom clarification of the code can be sought.

The Executive Commission on Ethical Standards believes that all officers and employees should receive notice of the ethical standards to which they are held. The Commission has noted, however, that there is no uniform procedure throughout the principal departments and major agencies of the executive branch of State government to ensure that each officer and employee receives a copy of the agency code of ethics. The proposed amendment imposes an affirmative obligation on each agency to distribute its code to all current and future officers and employees and to maintain a record of that distribution. To the extent practicable, the proposed amendment, by means of specifying language for a receipt to be

signed by each officer and employee, creates an affirmative obligation on each officer and employee to read the code of ethics.

The distribution procedure is expected to be in effect by January 31, 1995.

**Waiver to the Provisions of N.J.S.A. 52:13D-17.2(b) - Relationships with Casino Applicants and Licensees**

Prior to 1993, Section 17.2(b) of the Conflicts Law prohibited State officers and employees and members of their immediate families from holding an interest in, holding employment with, or representing, appearing for, or negotiating on behalf of the holder of or applicant for a casino license or any holding or intermediary company with respect thereto. Member of the immediate family is defined as a spouse, child, parent or sibling residing in the same household as the State officer or employee.

In December 1993, the Legislature amended the statute, adding the following exception language:

"except that a member of the immediate family of a State officer or employee, or person, may hold employment with the holder of, or applicant for, a casino license, if, in the judgment of the Executive Commission on Ethical Standards ... such employment will not interfere with the responsibilities of the State officer or employee, or person, and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the State officer or employee or person."

Since the amendment, the Executive Commission has granted five waivers under this provision. All requests for waivers should be forwarded to the Executive Commission for review and should include information regarding the State officer's or employee's job responsibilities, the family member's relationship to the State officer or employee, name of the casino and family member's casino position and responsibilities.

**COMMISSION CASE NO. 153-93A**

**SUBJECT:** Recusal.

**FACTS:** The State employee is employed at a State institution of higher education and also sits on a State board that regulates his profession. In his capacity as a board member, the State employee participated in discussions and voting on proposed regulations which could potentially affect the programs that he supervises at the institution where he holds full-time employment.

**RULING:** The Executive Commission ruled that the State employee should recuse himself from discussions and voting on the proposed regulation.

**REASONING:** Based on precedent, the Commission determined that the State employee should recuse himself from discussions and voting on the proposed regulation since its implementation could have a beneficial impact on the program he supervises. The Commission felt that the employee's support of the regulation could be viewed as acting in his own interest in the continuing success of his program. To

that extent, his objectivity as a board member could be seen as being impaired.

### **COMMISSION CASE NO. 153-93B**

**SUBJECT:** Recusal.

**FACTS:** The special State officer sits on the State professional board that makes policy decisions which could affect the institution of higher education where he is employed on a part-time basis. In his capacity as a board member, he participated in discussions and voting on a proposed regulation which affects a category of students at the institution where he is employed part-time. At the time of the discussions and voting, the special State officer had no involvement with this category of students.

**RULING:** The Executive Commission ruled that the special State officer's conduct did not violate the Conflicts Law and dismissed the allegation.

**REASONING:** Since the special State officer had no direct or indirect financial interest that could have conflicted with or impaired his objectivity in the discharge of his official duties at the time of the board meeting, there was no violation of the Conflicts Law.

### **COMMISSION CASE NO. 16-93**

**SUBJECT:** Supervisor/Subordinate Relationships - Relatives.

**FACTS:** The State employee was in charge of a county office for her department. Her husband and an employee of her husband's firm received work from that office and the State employee certified invoices upon comple-

tion of the work. The invoices were then forwarded to the department's main office for review and payment.

**RULING:** The State employee entered into a consent order with the Commission. It is the Commission's position that the assignment of the work and the certification of the invoices constituted indications of violations of sections 23(e)(1), 23(e)(3) and 23(e)(7) of the Conflicts Law.

**REASONING:** The State employee cannot assign work to or certify invoices of a family member or an employee of the family member's firm. The State employee had an indirect financial interest in the success of her husband's firm. In addition, the situation raised issues of the State employee using her official position to secure an unwarranted privilege for her spouse and an appearance of a violation of the public trust.

### **COMMISSION CASE NO. 226-93**

**SUBJECT:** Application of Section III of Executive Order No. 2 to Section 8 Housing Contracts.

**FACTS:** The State employee, who is a financial disclosure filer, owns several properties which he leases to tenants under the section 8 housing subsidy program. Under the section 8 program, there is a three-party contract; the landlord agrees to provide the rental unit, and the tenant and the local housing authority agree to pay specified portions of the rent.

**RULING:** Under the standards of section III.A of Executive Order No. 2, the State employee cannot participate in the section 8 subsidy program because it necessitates

entering into contracts with a local housing authority. He must divest himself of his interest in the properties at issue, terminate the section 8 contractual arrangements, or leave his State position within 120 days of receiving notice from the Commission.

**REASONING:** Section III of Executive Order No. 2 prohibits a State employee from retaining any interest in any business entity "doing business" with any federal, state, interstate or local government entity except if such purchase, sale, contract or agreement with the government entity, other than a New Jersey State agency, is made or awarded after public notice and competitive bidding as provided by the Local Government Contracts Law, *N.J.S.A. 40A:11-1 et seq.*, or similar provisions in other jurisdictions and with the prior approval of the Executive Commission. There is an absolute prohibition on contracts with the State of New Jersey.

The Commission, upon advice from the Attorney General's office, ruled that Executive Order No. 2 applies to this type of situation under the "doing business" language. "Doing business" is defined in Executive Order No.2 as business or commercial transactions involving the sale, conveyance or rental of any goods or services, and shall not include such activities as compliance with regulatory procedures. In this situation, the State employee has contracts with a local housing agency; the program is administered by the DCA, a State agency, with funding provided by HUD, a federal agency.

#### **COMMISSION CASE NO. 15-94**

**SUBJECT:** Unwarranted Privilege.

**FACTS:** The State employee wrote a letter on official stationery to submit her spouse's consulting application to two State agencies and also made several telephone calls, in which she utilized her official title, to inquire about the status of the applications.

**RULING:** The State employee entered into a consent order with the Commission. It is the Commission's position that the State employee's use of official stationery and communication with State agencies on behalf of her spouse constituted indications of violations of sections 23(e)(3) and 23(e)(7).

**REASONING:** The use of official stationery for such purposes is not permitted under the Commission's Guidelines Governing the Use of Official Stationery. Also, the telephone calls in which the employee used her official title suggest an attempt to use her State position to secure an unwarranted advantage for her spouse and an appearance of a violation of the public trust.

#### **COMMISSION CASE NO. 1-94**

**SUBJECT:** Post Employment Restriction.

**FACTS:** Two former employees of a State agency requested an opinion from the Commission as to whether their consulting work in regard to the refinancing of bonds issued while they were employed at the agency is violative of the post-employment restriction of the Conflicts Law.

**RULING:** The Executive Commission ruled that the former employees' involvement in the refinancing could be viewed as a separate matter from the original financing, and, thus, they were not prohibited from performing the consulting services on behalf of their client.

**REASONING:** The Commission determined that the refinancing of bonds previously issued is a different "matter" than that of the original bond issue because refinancing involves a new application process and review based on current conditions.

#### **COMMISSION CASE NO. 16-94**

**SUBJECT:** Applicability of Casino Post-Employment Restriction.

**FACTS:** The State employee asked the Commission to review his status as a financial disclosure filer. He stated that his filings were informational and not mandated by executive order or statute and, thus, he should not be subject to the section 17.2(c) casino post-employment restriction. His title was not included in the applicable executive orders at the time he filed his financial disclosure statements. The employee's supervisor advised that the employee did not function in any way equivalent to any position specified in the orders.

**RULING:** The State employee's financial disclosure filings were informational, and, thus, he is not subject to the casino post-employment restriction of section 17.2(c).

**REASONING:** Section 17.2(c) applies to "persons," defined in section 17.2(a) as "any State officer or employee subject to financial disclosure by law or executive order...." Because the State employee's

position was not specified in the executive order, he was not required to file financial disclosure. His financial disclosure statements can be regarded as serving an informational purpose and he is not subject to the post-employment restriction of section 17.2(c).

The Commission noted that some departments require that certain employees file financial disclosure statements with the Commission even though those employees do not serve in positions that are mandated to file by executive order or statute. Such individuals would not be covered by the section 17.2(c) casino post-employment provision. The Commission advised the staff to make known to financial disclosure filers that any individual who feels that he/she is filing for informational purposes and not because the filing is mandated by executive order or statute can seek an opinion from the Commission regarding his/her status. By using this mechanism to obtain a determination regarding the applicability of the casino post-employment restriction prior to leaving State service, individuals will not be delayed unnecessarily if they are considering casino-related employment. Of course, all State employees remain subject to the general section 17 post-employment restriction of the Conflicts Law.

Any current filer who would like to request a determination as to whether he/she is a mandatory filer, subject to the restriction, or an informational filer, not covered by the restriction, should contact the Commission staff, in writing, and provide details regarding current title and job responsibilities. The request will be considered at a Commission meeting as the agenda schedule permits.

**Regarding "Guidelines"**

Please direct any comments or questions about "Guidelines" to Jeanne A. Mayer, Esq., Deputy Director, Executive Commission on Ethical Standards, CN 082, Trenton, NJ 08625, (609)292-1892.

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